

Office of the Secretary, Commerce

§ 15.18

§ 15.16 Legal proceedings between private litigants: Expert or opinion testimony.

In addition to the policies and procedures as outlined in §§15.11 through 15.16, the following applies to legal proceedings between private litigants:

(a) If a Department employee is authorized to give testimony in a legal proceeding not involving the United States, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Department employee. Employees, with or without compensation, shall not provide expert testimony in any legal proceedings regarding Department information, subjects or activities except on behalf of the United States or a party represented by the United States Department of Justice. However, upon a showing by the requester that there are exceptional circumstances and that the anticipated testimony will not be adverse to the interest of the Department or the United States, the General Counsel, or the Solicitor, or appropriate agency counsel may, in writing grant special authorization for the employee to appear and give the expert or opinion testimony.

(b)(1) If, while testifying in any legal proceeding, an employee is asked for expert or opinion testimony regarding official DOC information, subjects or activities, which testimony has not been approved in advance in accordance with the regulations in this subpart, the witness shall:

(i) Respectfully decline to answer on the grounds that such expert or opinion testimony is forbidden by the regulations in this subpart;

(ii) Request an opportunity to consult with the General Counsel, or the Solicitor, or appropriate agency counsel before giving such testimony; and

(iii) Explain that upon such consultation, approval for such testimony may be provided.

(2) If the witness is then ordered by the body conducting the proceeding to provide expert or opinion testimony regarding official DOC information, subjects or activities without the opportunity to consult with either the General Counsel, or the Solicitor, or appropriate agency counsel, the witness shall respectfully refuse to provide

such testimony. See *United States ex rel. Touhy v. Ragen*, 340 U. S. 462 (1951).

(c) If an employee is unaware of the regulations in this subpart and provides expert or opinion testimony regarding official DOC information, subjects or activities in a legal proceeding without the aforementioned consultation, the witness shall, as soon after testifying as possible, inform the General Counsel, or the Solicitor, or appropriate agency counsel that such testimony was given and provide a written summary of the expert or opinion testimony provided.

[60 FR 9291, Feb. 17, 1995. Redesignated and amended at 62 FR 19669, 19670, Apr. 23, 1997]

§ 15.17 Demands or requests in legal proceedings for records protected by confidentiality statutes.

Demands in legal proceedings for the production of records, or for the testimony of Department employees regarding information protected by the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905 or other confidentiality statutes, must satisfy the requirements for disclosure set forth in those statutes before the records may be provided or testimony given. The General Counsel, or the Solicitor, or appropriate agency counsel should first determine if there is a legal basis to provide the testimony or records sought under applicable confidentiality statutes before applying §§15.11 through 15.18. Where an applicable confidentiality statute mandates disclosure, §§15.11 through 15.18 will not apply.

[60 FR 9291, Feb. 17, 1995. Redesignated and amended at 62 FR 19669, 19670, Apr. 23, 1997]

§ 15.18 Testimony of Department employees in proceedings involving the United States.

The following applies in legal proceedings in which the United States is a party:

(a) A Department employee may not testify as an expert or opinion witness for any other party other than the United States.

(b) Whenever, in any legal proceeding involving the United States, a request is made by an attorney representing or acting under the authority of the United States, the General Counsel, or